

APPENDIX K
CONSULTATION AND COORDINATION



REPLY TO
ATTENTION OF:

DEPARTMENT OF THE ARMY
WALLA WALLA DISTRICT, CORPS OF ENGINEERS
COEUR d'ALENE REGULATORY OFFICE
U.S. FOREST SERVICE BLDG.
3815 SCHREIBER WAY
COEUR d'ALENE, IDAHO 83815-8363

June 3, 2002

Operations Division

SUBJECT: NWW No. 981101710

Emerald Creek Garnet International
1836 Northwest Boulevard Ste 200
Coeur D Alene, ID 83814-2616

Gentleman:

This is our approved jurisdictional determination for your proposed dredge mining of alluvial garnet deposits on 327.5 acres of current and historic floodplain of the St. Maries River located near Fernwood in Benewah County, Idaho. We reviewed the wetland delineation report entitled Wetland Delineation for St. Maries River Study Areas, dated September 7, 1999, prepared by Selkirk Environmental. We feel it accurately delineates the extent of waters of the United States, including wetlands. Please note this document includes areas that have been omitted from the proposed project area. The basis of this jurisdictional determination is enclosed. This jurisdictional determination is valid for a period of 5 years from the date of this letter unless new information warrants revision of the determination before the expiration date.

We are enclosing an appeals form that explains the options you have if you do not agree with this approved jurisdictional determination. If you decide to appeal this determination, you need to send the form to the Division Engineer, Northwestern Division, so that he receives it within 60 days of this letter. If you have new information you want us to consider, you may send it to the Regulatory Branch, Walla Walla District, at the letterhead address before you file the appeal.

As you know, discharging dredged or fill material into waters of the United States, including wetlands, before obtaining the required Department of the Army permit constitutes a violation of the provisions of the Clean Water Act.

A copy of this Jurisdictional Determination has been sent to Mr. John Everingham, Science Applications International Corporation, 405 S. 8th Street, Suite 301, Boise, Idaho 83702. If you have any questions, please contact me at (208) 765-7237.

Sincerely

A handwritten signature in black ink, reading "Michael T. Doherty". The signature is fluid and cursive, with a long vertical line extending downwards from the end of the name.

Michael T. Doherty
Regulatory Project Manager

Enclosures

JURISDICTIONAL DETERMINATION
U.S. Army Corps of Engineers, Walla Walla District

APPLICANT: Emerald Creek Garnet

FILE NUMBER: 981101710

PROJECT LOCATION/WATERWAY: Fernwood, Idaho /St. Maries River, tributaries to St. Maries River, and Adjacent wetlands.

PROJECT REVIEW COMPLETED: ☐ Office ☒ Field

Jurisdictional Determination (JD): (For sites regulated under 33 CFR 320-330)

- ☐ Preliminary JD - Based on available information, *there appear to be* ☐ *or there appear to be no* ☐ waters of the United States on the project site. A preliminary JD is not appealable.
- ☒ Approved JD - *There are* ☒ *or there are no* ☐ waters of the United States on the project site, as identified in the basis of jurisdictional determination indicated below. An approved JD is an appealable action (33 CFR 331).
(Note: JDs prepared by the Environmental Protection Agency or the Natural Resource Conservation Service are not appealable to the Corps of Engineers)

Basis of Jurisdictional Determination: (33 CFR 328.3)

- ☐ The presence of waters which are currently used, or were used in the past, or may be susceptible for use to transport interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide (i.e. navigable waters of the U.S.).
- ☐ The presence of interstate waters (including interstate wetlands¹).
- ☒ The presence of a tributary to an interstate water or other water of the US.
- ☐ Impoundments of interstate or other waters of the US or their tributaries.
- ☐ The presence of territorial seas.
- ☒ The presence of wetlands adjacent² to interstate or other waters of the US, except for those wetlands adjacent to other wetlands.
- ☐ The presence of an isolated water (e.g., intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds).
- ☐ The site is used by interstate or foreign travelers for recreational purposes.
- ☐ The site has fish or shellfish that are taken and sold in interstate or foreign commerce.
- ☐ The site is used for industrial purposes by industries in interstate commerce.
- ☐ Other: _____

Rationale for Basis of JD (required for all approved JDs):

St. Maries River and streams in the project area are tributaries to the Spokane River, an interstate water of the U.S. Wetlands are adjacent to this interstate tributary system.

Lateral Extent of Jurisdiction (33 CFR 328 and 329):

- ☒ Ordinary High Water Mark indicated by:
- ☒ clear, natural line impressed on the bank
 - ☒ the presence of litter and debris
 - ☒ changes in the character of soil
 - ☒ destruction of terrestrial vegetation
 - ☒ shelving
 - ☐ other: Clearly established bed and banks.
- ☐ Mean High Water Mark indicated by
- ☐ survey to available datum; ☐ physical markings; ☐ vegetation lines/changes in veg types

- ☐ High Tide Line indicated by:
- ☐ oil or scum line along shore objects
 - ☐ fine shell or debris deposits (foreshore)
 - ☐ physical markings/characteristics
 - ☐ tidal gages
 - ☐ other: _____

☐ In ocean or coastal area, site is in a zone three geographic (nautical) miles seaward of the baseline³

☐ Wetland maps and jurisdictional report prepared by: Mike Carroll/Selkirk Environmental dated September 7, 1999.

☐ Additional supporting information (attach when appropriate)

Preparer:

Date:

¹Wetlands are identified and delineated using the methods and criteria established in the Corps Wetland Delineation Manual (87 Manual)(i.e., occurrence of hydrophytic vegetation, hydric soils and wetland hydrology). Processes for determining wetlands on agricultural lands may vary from methods described in the Corps Wetland Delineation Manual.

²The term "adjacent" means bordering, contiguous, or neighboring. Wetlands separated from other waters of the U.S. by man-made dikes or barriers, natural river berms, beach dunes, and the like are also adjacent.

³Baseline is the line on the shore reached by the ordinary low tides from which the distance of three miles is measured.

NOTIFICATION OF ADMINISTRATIVE APPEAL OPTIONS AND PROCESS AND REQUEST FOR APPEAL

Applicant: Emerald Creek Garnet	File Number: 981101710	Date: June 3, 2002
Attached is:		See Section Below
<input type="checkbox"/>	INITIAL PROFFERED PERMIT (Standard Permit or Letter of Permission)	A
<input type="checkbox"/>	PROFFERED PERMIT (Standard Permit or Letter of Permission)	B
<input type="checkbox"/>	PERMIT DENIAL	C
<input checked="" type="checkbox"/>	APPROVED JURISDICTIONAL DETERMINATION	D
<input type="checkbox"/>	PRELIMINARY JURISDICTIONAL DETERMINATION	E

SECTION I - The following identifies your rights and options regarding an administrative appeal of the above decision. Additional information may be found at <http://usace.army.mil/inet/functions/cw/cecwo/reg> or Corps regulations at 33 CFR Part 331.

A: INITIAL PROFFERED PERMIT: You may accept or object to the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations (JD) associated with the permit.
- **OBJECT:** If you object to the permit (Standard or LOP) because of certain terms and conditions therein, you may request that the permit be modified accordingly. You must complete Section II of this form and return the form to the district engineer. Your objections must be received by the district engineer within 60 days of the date of this notice, or you will forfeit your right to appeal the permit in the future. Upon receipt of your letter, the district engineer will evaluate your objections and may: (a) modify the permit to address all of your concerns, (b) modify the permit to address some of your objections, or (c) not modify the permit having determined that the permit should be issued as previously written. After evaluating your objections, the district engineer will send you a proffered permit for your reconsideration, as indicated in Section B below.

B: PROFFERED PERMIT: You may accept or appeal the permit.

- **ACCEPT:** If you received a Standard Permit, you may sign the permit document and return it to the district engineer for final authorization. If you received a Letter of Permission (LOP), you may accept the LOP and your work is authorized. Your signature on the Standard Permit or acceptance of the LOP means that you accept the permit in its entirety, and waive all rights to appeal the permit, including its terms and conditions, and approved jurisdictional determinations associated with the permit.
- **APPEAL:** If you choose to decline the proffered permit (Standard or LOP) because of certain terms and conditions therein, you may appeal the declined permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

C: PERMIT DENIAL: You may appeal the denial of a permit under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

D: APPROVED JURISDICTIONAL DETERMINATION: You may accept or appeal the approved JD or provide new information.

- **ACCEPT:** You do not need to notify the Corps to accept an approved JD. Failure to notify the Corps within 60 days of the date of this notice, means that you accept the approved JD in its entirety, and waive all rights to appeal the approved JD.
- **APPEAL:** If you disagree with the approved JD, you may appeal the approved JD under the Corps of Engineers Administrative Appeal Process by completing Section II of this form and sending the form to the division engineer. This form must be received by the division engineer within 60 days of the date of this notice.

E: PRELIMINARY JURISDICTIONAL DETERMINATION: You do not need to respond to the Corps regarding the preliminary JD. The Preliminary JD is not appealable. If you wish, you may request an approved JD (which may be appealed), by contacting the Corps district for further instruction. Also you may provide new information for further consideration by the Corps to reevaluate the JD.

SECTION II - REQUEST FOR APPEAL or OBJECTIONS TO AN INITIAL PROFFERED PERMT

REASONS FOR APPEAL OR OBJECTIONS: (Describe your reasons for appealing the decision or your objections to an initial proffered permit in clear concise statements. You may attach additional information to this form to clarify where your reasons or objections are addressed in the administrative record.)

ADDITIONAL INFORMATION: The appeal is limited to a review of the administrative record, the Corps memorandum for the record of the appeal conference or meeting, and any supplemental information that the review officer has determined is needed to clarify the administrative record. Neither the appellant nor the Corps may add new information or analyses to the record. However, you may provide additional information to clarify the location of information that is already in the administrative record.

POINT OF CONTACT FOR QUESTIONS OR INFORMATION:

If you have questions regarding this decision and/or the appeal process you may contact:

District Engineer
ATTN: A. Bradley Daly
Regulatory Branch Walla Walla District
201 North 3rd Avenue
Walla Walla, WA 99362-1876
(509) 527-7150

If you only have questions regarding the appeal process you may also contact:

U.S. Army Corps of Engineers
Northwestern Division
ATTN: Mores Bergman, Appeal Review
Officer
12565 West Center Road
Omaha, Nebraska 68144-3869
Telephone (402) 697-3869

RIGHT OF ENTRY: Your signature below grants the right of entry to Corps of Engineers personnel, and any government consultants, to conduct investigations of the project site during the course of the appeal process. You will be provided a 15 day notice of any site investigation, and will have the opportunity to participate in all site investigations.

Date:

Telephone number:

Signature of appellant or agent.



United States Department of the Interior

FISH AND WILDLIFE SERVICE
Upper Columbia Fish and Wildlife Office
11103 East Montgomery Drive
Spokane, Washington 99206

March 15, 2002

Tom Duebendorfer
Professional Wetland Scientist, Botanist
P.O. Box 167
Elmira, Idaho 83865

Subject: Species List for the Proposed Emerald Creek Project in Benewah County, Idaho

Reference Number: 1-9-02-SP-0232

Dear Mr. Duebendorfer:

This responds to your February 15, 2002, request for a list of threatened and endangered species that may occur in the vicinity of the proposed Emerald Creek project in Benewah County, Idaho. We understand that the project involves field studies, EIS preparation, and permitting for the project. Please use the above reference number for all future correspondence regarding this project.

We have reviewed the information you provided. Our records indicate that the following listed species may occur in the vicinity of the project and could potentially be affected by it:

Listed Species

Experimental/Non-essential

Gray wolf (*Canis lupus*)

Threatened

Bull trout (*Salvelinus confluentus*)

Ute ladies'-tresses (*Spiranthes diluvialis*)

There are species regulations defining the protection and management of gray wolves designated as nonessential experimental, as outlined in the final rules published in the Federal Register, Vol. 59, No. 223 - November 22, 1994. These regulations include special provisions regarding "take" of gray wolves. For section 7 interagency coordination purposes, wolves designated as nonessential experimental that are not within units of the National Park System or National Wildlife Refuge System are treated as proposed species. As such, Federal agencies are only required to confer with the Service when they determine that an action they authorize, fund, or carry out "is likely to jeopardize the continued existence" of the species.

If there is federal agency involvement in this project (funding, authorization, or other action), the involved federal agency must meet its responsibilities under section 7 of the Endangered Species Act of 1973, as amended (Act), as outlined in Enclosure A. Enclosure A includes a discussion of the contents of a Biological Assessment (BA), which provides an analysis of the impacts of the project on listed and proposed species, and designated and proposed critical habitat. Preparation of a BA is required for all major construction projects. Even if a BA is not prepared, potential project effects on listed and proposed species should be addressed in the environmental review for this project. Federal agencies may designate, in writing, a non-federal representative to prepare a BA. However, the involved federal agency retains responsibility for the BA, its adequacy, and ultimate compliance with section 7 of the Act.

Preparation of a BA would be prudent when listed or proposed species, or designated or proposed critical habitat, occur within the project area. Should the BA determine that a listed species is likely to be affected by the project, the involved federal agency should request section 7 consultation with the U.S. Fish and Wildlife Service (Service). If a proposed species is likely to be jeopardized by the project, regulations require conferencing between the involved federal agency and the Service. If the BA concludes that the project will have no effect on any listed or proposed species, we would appreciate receiving a copy for our information.

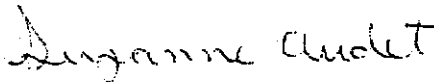
If there is no federal agency involvement in your project, and you determine that it may negatively impact a listed or proposed species, you may contact us regarding the potential need for permitting your actions under section 10 of the Act.

If you would like information concerning state listed species or species of concern, you may contact the Idaho Department of Fish and Game, at (208) 334-3402.

This letter fulfills the requirements of the Service under section 7 of the Act. Should the project plans change significantly, or if the project is delayed more than 90 days, you should request an update to this response.

Thank you for your efforts to protect our nation's species and their habitats. If you have any questions concerning the above information, please contact Carrie Cordova at (509) 893-8022.

Sincerely,



For Supervisor

Enclosure

c: IDFG, Coeur d'Alene
SAIC, Rob Cavallaro

Responsibility of Federal Agencies under Section 7
of the Endangered Species Act

Section 7(a) - Consultation/Conferencing

- Requires: 1) Federal agencies to utilize their authorities to carry out programs to conserve endangered and threatened species;
- 2) Consultation with the U.S. Fish and Wildlife Service (Service) when a federal action may affect a listed species to ensure that any action authorized, funded, or carried out by a federal agency will not jeopardize the continued existence of listed species, or result in destruction or adverse modification of critical habitat. The process is initiated by the federal agency after determining that the action may affect a listed species; and
- 3) Conferencing with the Service when a federal action may jeopardize the continued existence of a proposed species, or result in destruction or adverse modification of proposed critical habitat.

Section 7(c) - Biological Assessment for Major Construction Activities

Requires federal agencies or their designees to prepare a Biological Assessment (BA) for major construction activities¹. The BA analyzes the effects of the action, including indirect effects and effects of interrelated or interdependent activities, on listed and proposed species, and designated and proposed critical habitat. The process begins with a request to the Service for a species list. If the BA is not initiated within 90 days of receipt of the species list, the accuracy of the list should be verified with the Service. The BA should be completed within 180 days after its initiation (or within such a time period as is mutually agreeable between the Service and the involved federal agency). No irreversible commitment of resources is to be made during the BA process that forecloses reasonable and prudent alternatives for the project that could protect listed and proposed species. Project planning, design, and administrative actions may proceed, however, no construction may begin.

We recommend the following for inclusion in a BA: an onsite inspection of the area to be affected by the proposal, which may include a detailed survey of the area to determine if listed or proposed species are present; a review of pertinent literature and scientific data to determine the species' distribution, habitat needs, and other biological requirements; interviews with experts, including those within the Service, state conservation departments, universities, and others who may have data not yet published in scientific literature; an analysis of the effects of the proposal on the species in terms of individuals and populations, including consideration of cumulative effects of the proposal on the species and its habitat; and an analysis of alternative actions considered. The BA should document the results of the impacts analysis, including a discussion

of study methods used, any problems encountered, and other relevant information. The BA should conclude whether or not any listed species may be affected, proposed species may be jeopardized, or critical habitat may be adversely modified by the project. Upon completion, the BA should be forwarded to the Service.

Major concerns that should be addressed in a BA for listed and proposed animal species include:

1. Level of use of the project area by the species, and amount or location of critical habitat;
2. Effect(s) of the project on the species' primary feeding, breeding, and sheltering areas;
3. Impacts from project construction and implementation (*e.g.*, increased noise levels, increased human activity and/or access, loss or degradation of habitat) that may result in disturbance to the species and/or their avoidance of the project area or critical habitat.

Major concerns that should be addressed in a BA for listed or proposed plant species include:

1. Distribution of the taxon in the project area;
2. Disturbance (*e.g.*, trampling, collecting) of individual plants or loss of habitat; and
3. Changes in hydrology where the taxon is found.

Section 7(d) - Irreversible or Irretrievable Commitment of Resources

Requires that, after initiation or reinitiation of consultation required under section 7(a)(2), the Federal agency and any applicant shall make no irreversible or irretrievable commitment of resources with respect to the action which has the effect of foreclosing the formulation or implementation of any reasonable and prudent alternatives which would avoid violating section 7(a)(2). This prohibition is in force during the consultation process and continues until the requirements of section 7(a)(2) are satisfied.

¹ A major construction activity is a construction project, or other undertaking having similar physical impacts, which is a major action significantly affecting the quality of the human environment as referred to in the National Environmental Policy Act [42 U.S.C. 4332 (2)(c)].